

AMENDED IN ASSEMBLY APRIL 14, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1591

Introduced by Assembly Member Yamada

January 4, 2010

An act to amend ~~Section 212 of~~ *Sections 215 and 225.5 of*, and to add *Section 212.5 to*, the Labor Code, relating to wages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1591, as amended, Yamada. Wages: prohibited forms of payment.

Existing law prohibits a person from issuing certain instruments in payment of wages due unless certain circumstances are met, as specified.

This bill would, in addition, ~~require that the established place of business in the state at which the instrument is payable is also a reasonable distance from the place of employment or the residence of the employee~~ *prohibit an employer from using a payroll card, as defined, to pay an employee's wages unless the employee voluntarily signs a written agreement to do so and the employer also provides the employee another lawful option for receiving his or her wages.*

~~A violation of the existing provisions constitutes a misdemeanor. By adding a new requirement to these provisions, this bill would expand the scope of~~ *constitute a crime*, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 212 of the Labor Code is amended to~~
2 ~~read:~~

3 ~~212. (a) No person, or agent or officer thereof, shall issue in~~
4 ~~payment of wages due, or to become due, or as an advance on~~
5 ~~wages to be earned:~~

6 ~~(1) Any order, check, draft, note, memorandum, or other~~
7 ~~acknowledgment of indebtedness, unless it is negotiable and~~
8 ~~payable in cash, on demand, without discount, at some established~~
9 ~~place of business in the state that is a reasonable distance from the~~
10 ~~place of employment or the residence of the employee, the name~~
11 ~~and address of that place of business appears on the instrument,~~
12 ~~and at the time of its issuance and for a reasonable time thereafter,~~
13 ~~which must be at least 30 days, the maker or drawer has sufficient~~
14 ~~funds in, or credit, arrangement, or understanding with the drawee~~
15 ~~for its payment.~~

16 ~~(2) Any scrip, coupon, cards, or other thing redeemable, in~~
17 ~~merchandise or purporting to be payable or redeemable otherwise~~
18 ~~than in money.~~

19 ~~(b) When an instrument mentioned in subdivision (a) is~~
20 ~~protested or dishonored, the notice or memorandum of protest or~~
21 ~~dishonor is admissible as proof of presentation, nonpayment, and~~
22 ~~protest and is presumptive evidence of knowledge of insufficiency~~
23 ~~of funds or credit with the drawee.~~

24 ~~(c) Notwithstanding paragraph (1) of subdivision (a), if the~~
25 ~~drawee is a bank, the bank's address need not appear on the~~
26 ~~instrument and, in that case, the instrument shall be negotiable and~~
27 ~~payable in cash, on demand, without discount, at any place of~~
28 ~~business of the drawee chosen by the person entitled to enforce~~
29 ~~the instrument.~~

30 ~~SECTION 1. Section 212.5 is added to the Labor Code, to read:~~

31 ~~212.5. (a) An employer shall not require an employee to~~
32 ~~receive his or her wages by payroll card unless the employee~~

1 voluntarily agrees in writing to do so and the employer offers the
2 employee an alternative lawful method to receive his or her wages.

3 (b) For purposes of this section, “payroll card” means a
4 stored-value card, or other access mechanism, issued to an
5 employee by an employer, or other entity on behalf of the employer,
6 onto which the employer provides the employee access to his or
7 her wages for withdrawal or transfer by the employee.

8 SEC. 2. Section 215 of the Labor Code is amended to read:

9 215. Any person, or the agent, manager, superintendent or
10 officer thereof, who violates any provision of Section 201.3, 204,
11 204b, 205, 207, 208, 209, ~~or~~ 212, or 212.5 is guilty of a
12 misdemeanor. Any failure to keep posted any notice required by
13 Section 207 is prima facie evidence of a violation of these sections.

14 SEC. 3. Section 225.5 of the Labor Code is amended to read:

15 225.5. In addition to, and entirely independent and apart from,
16 any other penalty provided in this article, every person who
17 unlawfully withholds wages due any employee in violation of
18 Section 212, 212.5, 216, 221, 222, or 223 shall be subject to a civil
19 penalty as follows:

20 (a) For any initial violation, one hundred dollars (\$100) for each
21 failure to pay each employee.

22 (b) For each subsequent violation, or any willful or intentional
23 violation, two hundred dollars (\$200) for each failure to pay each
24 employee, plus 25 percent of the amount unlawfully withheld.

25 The penalty shall be recovered by the Labor Commissioner as
26 part of a hearing held to recover unpaid wages and penalties or in
27 an independent civil action. The action shall be brought in the
28 name of the people of the State of California and the Labor
29 Commissioner and attorneys thereof may proceed and act for and
30 on behalf of the people in bringing the action. Twelve and one-half
31 percent of the penalty recovered shall be paid into a fund within
32 the Labor and Workforce Development Agency dedicated to
33 educating employers about state labor laws, and the remainder
34 shall be paid into the State Treasury to the credit of the General
35 Fund.

36 ~~SEC. 2.~~

37 SEC. 4. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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